

DRAFT  
FOR DISCUSSION ONLY

# NON-PARENTAL CHILD CUSTODY AND VISITATION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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April 1-2, 2016 Drafting Committee Meeting

*TEXT ONLY, WITH REPORTER'S NOTES, BUT NO COMMENTS*

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February 29, 2016

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**NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

**TABLE OF CONTENTS**

SECTION 1. SHORT TITLE. ....	1
SECTION 2. DEFINITIONS. ....	1
SECTION 3. PLEADINGS. ....	5
SECTION 4. JURISDICTION. ....	6
SECTION 5. INITIAL PETITION BY DE FACTO PARENT. ....	7
SECTION 6. INITIAL PETITION BY NON-PARENT OF CHILD IN CUSTODY OF PARENT OR DE FACTO PARENT. ....	7
SECTION 7. INITIAL PETITION BY NON-PARENT OF CHILD NOT IN CUSTODY OF PARENT OR DE FACTO PARENT. ....	8
SECTION 8. HISTORY OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING. ....	9
SECTION 9. FACTORS CONSIDERED. ....	9
SECTION 10. PETITION TO MODIFY CUSTODY OR VISITATION. ....	12
SECTION 11. TEMPORARY ORDER. ....	12
SECTION 12. EFFECT OF ADOPTION OF CHILD BY A RELATIVE. ....	12
SECTION 13. APPOINTMENTS AND COURT SERVICES. ....	13
SECTION 14. CHILD SUPPORT; VISITATION COSTS. ....	13
SECTION 15. ATTORNEY FEES AND COSTS. ....	13
[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW.] ....	14
[SECTION 17. PRIORITY ON COURT CALENDAR.] ....	14
SECTION 18. APPLICATION TO ABUSED, NEGLECTED, OR DEPENDENT CHILDREN. ....	14
SECTION 19. OTHER RIGHTS AND REMEDIES. ....	14
SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	15
SECTION 21. TRANSITIONAL PROVISION. ....	15
SECTION 22. REPEALS; CONFORMING AMENDMENTS. ....	16
SECTION 23. EFFECTIVE DATE. ....	16

1                                   **NON-PARENTAL CHILD CUSTODY AND VISITATION ACT**

2                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Non-Parental Child  
3 Custody and Visitation Act.

4                   **Reporter’s Note:** Our liaison to the ULC Style Committee, Debra Behr, advised me that  
5 the Style Committee may prefer the word “Non-Parental” without a hyphen. She notes  
6 that Washington State statutes do not use a hyphen for “Nonparental.” Wash. Code 26.10  
7 (2016) (chapter entitled “Nonparental actions for child custody.” *See also* 23 Pa. Stat.  
8 and Cons. Stat. Ann. § 5327 (West 2016) (making reference to presumptions in cases  
9 involving a “nonparent”). My preference is to keep the hyphen. I think it makes the  
10 word easier to read and understand. Illinois’ Family Law statute uses hyphens for some  
11 of its Family Law terms – e.g., “non-marital property.” 750 Ill. Comp. Stat. 5/503(a)  
12 (2016). Changes to titles of acts (apparently including on issues related to hyphen) need  
13 to be approved by the Executive Committee.

14  
15 While the subject matter of this act was under review by a ULC Study Committee, the  
16 subject was referred to as “Third Party Custody and Visitation.” The term “Non-Parental  
17 Rights” seems more precise. At the first two Drafting Committee meetings, some  
18 participants favored utilizing a term other than “Non-Parental,” although there was not a  
19 consensus on what that term would be.

20  
21                   **SECTION 2. DEFINITIONS.** In this act:

22                   (1) “Child” means:

23                                   (A) an unemancipated individual who has not attained [18] years of age; or

24                                   (B) an adult son or daughter by birth or adoption, or under law of this state other  
25 than this [act], who is the subject of a court order concerning custodial responsibility.

26                   (2) “Custody” means physical custody, legal custody, or both. The term includes joint  
27 custody or shared custody as defined by the law of this state other than this [act].

28                   (3) “De facto parent” means:

29                                   (A) that, within the last two years, the petitioner has completely undertaken  
30 permanent, unequivocal, committed parental responsibility in the child’s life. Such a finding  
31 requires a determination by the court that:

32   (i) the petitioner has resided with the child for a significant period of time;

1 (ii) the petitioner has engaged in consistent caretaking of the child;

2 (iii) the petitioner has established a bonded and dependent relationship  
3 with the child, the relationship was supported by another parent of the child, and the petitioner  
4 and the other parent have accepted that relationship or behaved as though the petitioner is a  
5 parent of the child;

6 (iv) the petitioner has accepted full and permanent parental responsibility  
7 without expectation of financial compensation; and

8 (v) the continuing relationship between the petitioner and the child is in  
9 the best interests of the child; or

10 (B) that before or after the child’s birth, the petitioner entered into an agreement  
11 in a record or orally with each parent of the child to accept full and permanent parental  
12 responsibility and to raise the child together, except that if a parent has completely failed to  
13 exercise parental responsibility, the consent of the parent who failed to exercise parental  
14 responsibility is not required.

15 **Reporter’s Note:** At the November 2015 Drafting Committee meeting, we decided to  
16 move the definition of “de facto parent” to Section 5. After review of the act for style,  
17 however, the definition will stay in this section since the term is used in multiple sections.  
18 As agreed at the November 2015 Drafting Committee meeting, the definition of “de facto  
19 parent” is now based on the Maine statutory definition. The definition reduces some of  
20 the redundant words in the Maine statute – i.e., the phrases “fully and completely,”  
21 “fostered or supported,” and “understood, acknowledged or accepted that or behaved as  
22 though the individual is a parent of the child.” Ms. Behr also noted the issue of  
23 redundant words. See Appendix B of ULC Drafting Rules which is entitled “Do Not Use  
24 Redundant Couplets.” The definition in this act uses the term “parental responsibility”  
25 (which we have been using and have separately defined in our act) rather than the Maine  
26 act’s term of “parental role.”

27  
28 (4) “Detriment to the child” means adverse effect to the child’s physical or psychological  
29 well-being, including the effects resulting from interruption of a substantial beneficial  
30 relationship with the child or removal of the child from a stable placement of a child with a non-

1 parent.

2 (5) “Domestic violence” means domestic violence as defined in [cite to definition of  
3 “domestic violence” in law of this state other than this [act]].

4 (6) “Electronic” means relating to technology having electrical, digital, magnetic,  
5 wireless, optical, electromagnetic, or similar capabilities.

6 (7) “Legal custody” means the power to make important decisions regarding a child.

7 **Reporter’s Note:** Deborah Behr comments: “Definition of “Legal custody” is quite  
8 broad. Covers teachers, judges, etc.” Our earlier definition was more specific, although  
9 the opening phrase is broad: “Legal custody’ means the power to make important  
10 decisions regarding a child, including decisions regarding the child’s education, health  
11 care, and extracurricular activities.”) Such a definition of "legal custody" is used in many  
12 states.

13  
14 (8) “Non-parent” mean an individual other than a parent, including a child’s  
15 grandparents, great-grandparents, step-parents, and siblings.

16 **Reporter’s Note:** Ms. Behr raises the questions of whether we wish to include domestic  
17 partners in the definition. That seems reasonable to me. (I note that now that same-sex  
18 couples can marry, there are likely to be fewer people seeking domestic partnerships (or  
19 civil unions). She also notes that the definition is broad – “[i]ncludes any person in the  
20 world.” The definition is broad, in part, out of necessity to meet a variety of  
21 circumstances that may arise, and, in any case, before “non-parents” can obtain custody  
22 or visitation under this act, they must meet many criteria besides being a non-parent.  
23

24 (9) “Parent” means a person recognized as a parent under law of this state other than this  
25 [act].

26 **Report’s Note:** At the November 2015 Drafting Committee meeting, the committee  
27 asked that two alternative definitions of the following term -- “parental responsibility” --  
28 be placed in brackets. The committee will choose between them, and perhaps fine-tune  
29 the selection at the April 2016 meeting. I lean toward the second option, which is more  
30 precise, although I do not think we need the word “mental” as part of the definition.  
31 From my view, “mental needs” is an awkward phrase and is probably encompassed by  
32 “emotional, developmental, and educational needs.”  
33

34 (10) “Parental responsibility” means

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27

**Alternative A**

[exercising care and control to provide for the health and welfare of the child.]

**Alternative B**

[providing for a child’s well being, including the child’s physical, mental, emotional, developmental, and educational needs].

**End of Alternatives**

(11) “Parenting time” means parenting time as defined in [cite to definition of “parenting time” in law of this state other than this [act]].

(12) “Physical custody” means day-to-day care and supervision of a child.

**Reporter’s Note:** Ms. Behr comments: “Definition of ‘physical custody’ seems broad. Looks like it covers daycare services.” Perhaps we could add “by a person acting in a parental role.” We also could add “pursuant to a court order.”

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Sexual assault” means sexual assault as defined in [cite to definition of “sexual assault” in law of this state other than this [act]].

(15) “Stalking” means stalking as defined in [cite to definition of “stalking” in law of this state other than this [act]].

**Reporter’s Note:** Two definitions of “visitation” are offered. The first is the brief Black’s Law Dictionary definition. The second provides a little more detail. Ms. Behr notes that the definition “seems broad [--] covers school nurses for physicals.” As with the definition of “physical custody,” we could add the phrase “pursuant to a court order.”

(16) “Visitation” means

**Alternative A**

[access to a child.]

1 **Alternative B**

2 [the right to spend time with a child, which, may include overnights.]

3 **End of Alternatives**

4 **Reporter’s Note:** Ms. Behr raises the issue of whether the act needs a definition of  
5 “state.” I don’t think so. This is not a jurisdictional act in which we are dealing with  
6 issues of recognition of out-of-state orders and need to clarify if Puerto Rico, the Virgin  
7 Island, and U.S. territories should be considered states. When we use the term “state,” it  
8 is in brackets and is part of a direction to insert citation to other law within the state. A  
9 U.S. territory could insert its definition, if the territory adopts the act).

10  
11  
12 **Reporter’s Note:** Regarding the section on “Pleadings,” the Drafting Committee agreed  
13 that pleadings should include information required by the Uniform Child Custody  
14 Jurisdiction and Enforcement Act (UCCJEA). The committee also asked that the reporter  
15 prepare an alternate “Pleadings” section, which would include an “ideal” list of specific  
16 items to be included in pleadings, taking into consideration the suggestions of the  
17 National Organization for Women Foundation. Below are two alternatives: Alternative  
18 A, which is the original pleadings section with the addition of reference to the UCCJEA,  
19 and Alternative B, which includes a more detailed list specific items to be included in the  
20 pleadings.

21 **SECTION 3. PLEADINGS.**

22 **Alternative A**

23  
24 [The individual requesting custody or visitation shall file a verified petition specifying the  
25 facts on which the request is based. The facts must include the nature the relationship between  
26 the petitioner and the child and the information required by [cite to Section 209 of this state’s  
27 Uniform Child Custody Jurisdiction and Enforcement Act]].

28 **Alternative B**

29 [The individual requesting custody or visitation shall file a verified petition specifying the  
30 facts on which the request is based. The facts must include:

- 31 (1) the nature the relationship between the petitioner and the child;  
32 (2) if applicable, the nature of any agreement between the parties regarding care for the

1 child and contact with the child;

2 (3) attempts to obtain visitation or other contact with the child;

3 (4) the detriment to the child if the custody or visitation requested by the petitioner is not  
4 granted; and

5 (5) the information required by [cite to Section 209 of this state’s Uniform Child Custody  
6 Jurisdiction and Enforcement Act]].

7 **End of Alternatives**

8  
9 **SECTION 4. JURISDICTION.**

10 **Alternative A**

11 [The individual requesting custody or visitation shall file a petition only in a court that  
12 has jurisdiction to make a child-custody determination with respect to the child under [cite to this  
13 state’s Uniform Child Custody Jurisdiction and Enforcement Act]].

14 **Alternative B**

15 [The individual requesting custody or visitation shall file a petition only in a court that  
16 has jurisdiction under [cite to this state’s Uniform Child Custody Jurisdiction and Enforcement  
17 Act]].

18 **End of Alternatives**

19 **Reporter’s Note:** Perhaps the preceding sentence (or concept) should be in the text of  
20 the act. Ms. Behr asks if we “need a scope section for whether Indian children covered  
21 by the Indian Child Welfare Act are included under the Act?”  
22 Inclusion of such a scope section seems like a useful reminder to litigants and courts  
23 (although, in a technical sense, the scope section is not necessary since the Indian Child  
24 Welfare Act preempts any inconsistent state law). The Uniform Child Custody  
25 Jurisdiction and Enforcement Act (UCCJEA) has a scope provision. Section 104(a) of  
26 the UCCJEA – entitled “Application To Indian Tribes” – provides: “A child-custody  
27 proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25  
28 U.S.C. 1901 et seq., is not subject to this [act] to the extent that it is governed by the  
29 Indian Child Welfare Act.” On the other hand, the Uniform Deployed Parents Custody

1 and Visitation Act and the Uniform Child Abduction Prevention Act do not have such a  
2 provision.

3  
4 **SECTION 5. INITIAL PETITION BY DE FACTO PARENT.**

5 (a) An individual who has served as a de facto parent may file an initial petition for  
6 custody of or visitation with the child.

7 (b) The court shall adjudicate a petitioner to be a de facto parent if the court finds by clear  
8 and convincing evidence that the petitioner is a de facto parent.

9 (c) A petitioner adjudicated to be a de facto parent has the same right to custody,  
10 visitation, or parenting time as a parent.

11 **Reporter’s Note:** Ms. Behr comments that although some sections refer to “Initial  
12 Petition[s],” there is no mention of “Subsequent Petitions.” (The differentiation the  
13 Drafting Committee made was between “Initial Petition[s]” and actions to modify  
14 existing orders.” Ms. Behr suggested we might use the word “commence” for initial  
15 actions. I think that verb has some ambiguity since both an initial action and a  
16 modification action can be “commenced.” For this draft, I tried to deal with Ms. Behr’s  
17 concern by keeping the phrase “Initial Petition” and adding the phrase “Petition to  
18 Modify.”

19  
20 **SECTION 6. INITIAL PETITION BY NON-PARENT OF CHILD IN CUSTODY**  
21 **OF PARENT OR DE FACTO PARENT.**

22 (a) If a child is in the custody of a parent or de facto parent, a non-parent requesting  
23 custody or visitation may file an initial petition with the court for custody of or visitation with  
24 the child if the non-parent demonstrates:

- 25 (1) a substantial relationship exists between the child and the non-parent, and  
26 (2) the denial of custody or visitation to the non-parent would be a detriment to  
27 the child.

28 (b) In a proceeding under subsection (a), a rebuttable presumption exists that the parent’s  
29 or de facto parent’s decision about custody and visitation is in the best interests of the child. To

1 rebut the presumption, the petitioner must establish by clear and convincing evidence that:

2 (1) denial of custody or visitation to the petitioner is a detriment to the child, and

3 (2) custody or visitation to petitioner is the best interests of the child.

4 Proof of parental unfitness is not required to rebut the presumption described in subsection (b).

5 **SECTION 7. INITIAL PETITION BY NON-PARENT OF CHILD NOT IN**  
6 **CUSTODY OF PARENT OR DE FACTO PARENT.**

7 (a) If the child is not in the custody of a parent or de facto parent, a non-parent requesting  
8 custody or visitation may file an initial petition with the court for custody of or visitation with  
9 the child if the non-parent demonstrates a substantial relationship exists between the child and  
10 the non-parent.

11 (b) In an initial proceeding for custody of or visitation with a child between two or more  
12 petitioners who are non-parents, a presumption does not exist that custody or visitation should be  
13 given to the petitioner.

14 (c) To obtain custody or visitation, the non-parent must establish by clear and convincing  
15 evidence that custody or visitation for the non-parent is in the best interests of the child.

16 **Reporter’s Note:** Before review for style, this draft had a subsection (d), which  
17 provided: “If a non-parent’s petition for custody or visitation is filed under law of this  
18 state other than this act, the other law applies.” Ms. Behr commented: “Not needed.  
19 Covered by other law.”

20  
21 We discussed having a section which would give standing to a non-parent based on the  
22 non-parent having exercised parental responsibility pursuant to a court order.  
23 Presumably, a non-parent would have standing under whatever law that granted them  
24 parental responsibility (as well as potential standing under this act if the person if the  
25 criteria of this act were met).

26  
27 We have discussed, but not firmly decided, whether to explicitly deal with situations in  
28 which “both parents are deceased, incapacitated, [or unfit], or there has been a complete  
29 failure of the parents to exercise parental responsibility [and a substantial relationship  
30 exists between the child and the non-parent].” These situations could be covered by  
31 Sections 5 – 7.



1 consider the best interests of a child. In determining the best interests of a child, the court shall  
2 consider:

3 (1) the quality of the relationship between the child and the parent;

4 (2) the quality of the relationship between the child and petitioner, including whether the  
5 petitioner has served as a de facto parent of the child;

6 (3) the frequency and continuity of contact between the child and the petitioner,  
7 including the period of any disruption in the contact and the reasons for the disruption;

8 (4) the views of the child, having regard to the child's age and maturity;

9 (5) the willingness and ability of the parent and petitioner to facilitate, a positive  
10 relationship among the child, parties to the proceeding, and family members of the child, except  
11 that the court may not consider this willingness and ability if the parent or custodian of the child  
12 shows that the petitioning party has engaged in domestic violence, sexual assault, or stalking  
13 against the parent, child, child's siblings, or custodial guardian, and that a continuing relationship  
14 with the petitioner party will affect negatively the health or safety of the parent, child, child's  
15 siblings, custodial parent, or custodial guardian;

16 (6) the child's adjustment to the child's current and proposed home, school, and  
17 community;

18 (7) the mental and physical health of the child and parties to the proceeding, including  
19 alcohol abuse and drug abuse by the child or parties to the proceeding;

20 (8) a history of or threat of child abuse, child neglect, domestic violence, sexual assault,  
21 or stalking towards a parent, the child, child's siblings, or custodial guardian (A) by the  
22 petitioner or (B) by an individual with whom the petitioner has kinship or a significant  
23 relationship;

1 (9) the reasons for the parties' positions in the proceeding regarding custody and  
2 visitation;

3 (10) an agreement among the parties regarding custody or visitation; and

4 (11) any other relevant factor affecting the best interests of the child.]

5 **Reporter's Note:** At the November 2015 Drafting Committee meeting, the committee  
6 discussed several possible additions to the list of factors. The additions generally could  
7 be viewed as sub-categories of the existing factors, particularly the first three factors. We  
8 agreed to list the possible additional factors in the next draft and then decide whether to  
9 include them, balancing the desire comprehensiveness and precision with a desire not to  
10 make the list too unwieldy. The proposed additional factors are:

- 11  
12 (A) specific parent-like activities undertaken by the non-parent;  
13 (B) nature and extent of parental involvement by the non-parent;  
14 (C) any significant absence of the parent from the child's life;  
15 (D) death of a parent.

16  
17 Ms. Behr comments that the ULC has a preference for use of the singular in technical  
18 drafting. Thus, the Style Committee may prefer the term "best interest" rather than "best  
19 interests." She also notes that statutes and court cases have used both terms. From my  
20 review of statutes and case law, the plural -- "best interests" -- is much more widely used  
21 than "best interest," and for that reason, I favor use of "best interests."  
22

### 23 **Alternative B**

24 [When determining whether to grant custody or visitation under this [act], the court shall  
25 consider the factors specified in [cite to law of this state other than this [act]] for deciding custody  
26 or visitation disputes between parents]].

### 27 **End of Alternatives**

28 **Legislative Note:** *The act offers two alternatives for a list of factors a court shall consider when*  
29 *determining whether to grant custody or visitation to non-parents. Alternative A lists 11 factors,*  
30 *which are similar to the lists of factors in the 36 states that have factors in statutes pertaining*  
31 *non-parental visitation and custody. Alternative B provides a cross-reference to the state's*  
32 *existing factors that are considered in disputes between parents regarding custody, visitation, or*  
33 *parenting time. Before using Alternative B, drafters should ascertain if the list of factors in*  
34 *parental disputes is applicable to disputes involving non-parents. Some factors may be specific*  
35 *to parents, such as the wishes of the parents regarding custody or the willingness of the parents*  
36 *to encourage a close and continuing relationship between the child and the other parent.*

1 **Reporter’s Note:** I suggest the Drafting Committee adopt Alternative A (listing 11  
2 factors for the court to consider). There are at least two reasons for this approach. First,  
3 when states enacted third party visitation statutes, 36 states listed specific factors for  
4 consideration – thus reflecting a preference by legislatures for use of specific factors  
5 rather than just a cross-reference to another portion of the state’s Family Law statutes.  
6 Second, when a state lists factors to be considered in disputes between parents, the factors  
7 often are phrased in terms of the parents’ conduct or relationship with the child – rather  
8 than a more generic factor that would be equally applicable to disputes between two  
9 parents versus a parent and a non-parent (or two or more non-parents).

10  
11 As the drafting process proceeds, official “comments” will be included regarding the  
12 “Factors Considered.” The comments will note the number of states that have listed  
13 factors in the state’s non-parental visitation (and custody) statutes. The comments also  
14 may address specific factors.

15  
16 **SECTION 10. PETITION TO MODIFY CUSTODY OR VISITATION.** A petition  
17 to modify a custody or visitation order entered under this [act] shall be decided under [cite to the  
18 law of this state other than this act for modification of a custody, visitation, or parenting time  
19 order applicable to a dispute between parents).

20 **Reporter’s Note:** Ms. Behr raises the issue of whether a “judgment” as well as an  
21 “order” needs to be covered by this section. I think the word “order” covers judgments.”

22  
23 **SECTION 11. TEMPORARY ORDER.**

24 (a) On motion of a party or the court’s own motion, the court may enter a temporary  
25 order while the proceeding is pending.

26 (b) An order entered under this section has no presumptive effect and is not determinative  
27 when the court considers petitions for other orders under this [act].

28 **Reporter’s Note:** Ms. Behr asks the question: “What are the temporary orders about?  
29 Do they have any specific standards – like TRO?” I believe the Drafting Committee  
30 intended to leave the issue of standards for temporary orders to local practice. I have  
31 added a “comment” to that effect.

32  
33 **SECTION 12. EFFECT OF ADOPTION OF CHILD BY A RELATIVE.** The  
34 adoption of a child by a relative, including a stepparent, does not preclude granting custody or  
35 visitation to a petitioner who is a non-parent.

1           **SECTION 13. APPOINTMENTS AND COURT SERVICES.** To the extent available  
2 in other cases involving custody and visitation of children, the court may do one or more of the  
3 following:

4           (1) appoint a child’s attorney, guardian ad litem, child’s representative, or similar  
5 personnel;

6           (2) order mediation, but a party who has been the victim of domestic violence by another  
7 party to the proceeding, shall not be required to participate in mediation;

8           **Reporter’s Note:** The Drafting Committee discussed bracketing a portion of subsection  
9 (2) or including additional language in the subsection – perhaps to allow for mediation in  
10 jurisdictions that have appropriate protections for victims of domestic violence – e.g.,  
11 shuttle mediation in which the parties do not have direct contact with each other.  
12

13           (3) order evaluations or home studies of the child, parent, de facto parent, or petitioners  
14 who are non-parents; and

15           (4) allocate payment among the parties to the proceeding of fees for the services listed in  
16 this section.

17           **SECTION 14. CHILD SUPPORT; VISITATION COSTS.**

18           (a) The obligation of an individual adjudicated to be a de facto parent under this act is  
19 governed by [cite to law of this state other than this [act] governing a child support obligation of  
20 parents].

21           (b) An individual other than a de facto parent granted visitation under this [act] may be  
22 ordered to pay the cost of facilitating visitation with the child, including the cost of  
23 transportation.

24           **SECTION 15. ATTORNEY FEES AND COSTS.** The court may allocate and order  
25 payment of attorney fees, including interim fees, and costs among the parties to the proceeding  
26 under this [act].

1           **[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When  
2 making a decision under this [act], the court [on request of a party to the proceeding] shall make  
3 findings of fact and conclusions of law on the record in support of its decision.]

4 ***Legislative Note:** This section is placed in brackets because in some states, a requirement (or*  
5 *lack of requirement) of making findings of fact is governed by court rule rather than statute.*

6  
7           **Reporter’s Note:** Does the Drafting Committee wish to require findings of fact and  
8 conclusions of law in all cases – or just those cases in which a party requests them?  
9

10           **[SECTION 17. PRIORITY ON COURT CALENDAR.** A proceeding arising under  
11 this [act] must be given priority on the court calendar and handled expeditiously.]

12           **SECTION 18. APPLICATION TO ABUSED, NEGLECTED, OR DEPENDENT**  
13 **CHILDREN.** This [act] does not apply if the child is the subject of a proceeding under [cite to  
14 law of this state other than this [act] regarding custody and visitation of abused, neglected, or  
15 dependent children].

16           **SECTION 19. OTHER RIGHTS AND REMEDIES.** The rights and remedies of this  
17 [act] are not exclusive and do not preclude other rights and remedies under law of this state other  
18 than this [act].

19           **Reporter’s Note:** Ms. Behr comments: “Please explain the special need for this  
20 provision in light of Rule 502. Full Style Committee is likely to have a concern with the  
21 provision.”  
22

23           Uniform Law Commission, Drafting Rules, Section 502 (2012) provides:  
24

25                           **RULE 502. PROVISION DUPLICATING GENERAL PROVISION**  
26 **OF LAW.**

27  
28                           (a) Do not include a provision concerning civil, criminal, administrative,  
29 or appellate procedure unless the act is intended to establish a procedure different  
30 from general procedures.  
31

32                           (b) Do not include a provision stating that the act is supplemented by  
33 common-law principles unless, without such an affirmative statement, the act is  
34 likely to be construed as occupying the field, displacing common-law principles.

1 [ULC] Comment

2  
3 The incorporation of procedural provisions may impair the enactability of a  
4 uniform or model act. Repetition of general procedural provisions especially  
5 creates problems in states in which such procedures are established by court rule  
6 rather than by legislation.  
7

8 State statutes are usually presumed to be supplemented by the common law. The  
9 rare exception is an act, such as a workers' compensation act, that is intended to  
10 preempt the field and displace common-law remedies. Unless there is a  
11 legitimate concern that a uniform or model act, although not intended to occupy  
12 the field, will nevertheless be so construed, it is unnecessary and confusing to  
13 include a provision that repeats this settled principle of common law.  
14

15 **SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

16 applying and construing this uniform act, consideration must be given to the need to promote  
17 uniformity of the law with respect to its subject matter among states that enact it.

18 **Reporter's Note:** Ms. Behr asks: "Do you need standard provision in [ULC] Rule 602  
19 regarding electronic signatures? Courts are moving to electronic filing or petitions." I  
20 am not an expert on the law of electronic signatures, but I doubt that the ULC boilerplate  
21 signature section (quoted below) is necessary in this act. It appears that the electronic  
22 signature section is necessary in acts that specifically deal with recognitions of certain  
23 classes of documents, such as commercial paper and the signatures on those documents.  
24 Rule 602 provides for using the electronic signature section if the act contains a provision  
25 "requiring a notice or other record or a signature." Our act does not have such a  
26 provision. There is a trend toward electronic filings for legal actions (in general), but I  
27 believe that is an issue for local rules and statutes, not for our uniform act. The ULC  
28 electronic signature section provides as follows: "RELATION TO ELECTRONIC  
29 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act]  
30 modifies, limits, or supersedes the Electronic Signatures in Global and National  
31 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede  
32 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of  
33 any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."  
34

35 **SECTION 21. TRANSITIONAL PROVISION.** A petition or other request for relief

36 regarding a non-parent's request for custody and visitation which was commenced before the  
37 effective date of this act is governed by the statutes in effect at the time the petition or other  
38 request was made.

1       **Reporter’s Note:** The Transitional Provision is ULC boiler-plate, which has been used  
2 in many uniform acts. I note that there is another way to handle transitions that might be  
3 simpler for courts to apply and that may advance the application of the new act to more  
4 cases: “This [act] applies to all pending actions and proceedings commenced prior to its  
5 effective date with respect to issues on which a judgment has not been entered.” See,  
6 e.g., 750 Ill. Comp. Stat. 5/801(b)(2016).  
7

8       **SECTION 22. REPEALS; CONFORMING AMENDMENTS.**

9       (a) . . . .

10       (b) . . . .

11       (c) . . . .

12       **SECTION 23. EFFECTIVE DATE.** This [act] takes effect . . . .